UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/CODE.2/9
18 March 1991

Original: ENGLISH

REVIEW CONFERENCE ON THE UNITED NATIONS CONVENTION
ON A CODE OF CONDUCT FOR LINER CONFERENCES
Resumed Session
Geneva, 21 May 1991
Agenda item 6

REPORT OF THE MEETING OF OFFICIALS OF STATES ENTITLED TO ATTEND THE REVIEW CONFERENCE PURSUANT TO PARAGRAPH 5 OF RESOLUTION I ADOPTED BY THE REVIEW CONFERENCE ON 18 NOVEMBER 1988

held at the Palais des Nations, Geneva,
on 5 March 1991

CONTENTS

	Paragraphs
INTRODUCTION	1 - 2
REVISED RULES OF PROCEDURE FOR THE REVIEW CONFERENCE	3 - 9
THE PRESIDENT OF THE CONFERENCE	10 - 11
DATES FOR THE RESUMED SESSION	12 - 13
ANY OTHER BUSINESS	14
ATTENDANCE	15 - 16
ANNEX - STATEMENT BY GROUP B ON 5 MARCH 1991 AFTER APPROVAL OF THE RULES OF PROCEDURE	

GE.91-50449

READEX
FICHE

INTRODUCTION

1. Pursuant to paragraph 5 of resolution I adopted by the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences on 18 November 1988, a meeting of officials of States entitled to attend the Review Conference was held at the Palais des Nations, Geneva, on 5 March 1991. The meeting was chaired by the Secretary-General of UNCTAD.

2. In his opening remarks, the Chairman stated that the primary objective of the meeting was to present to Governments the revised provisional rules of procedure for the Review Conference for approval and recommendation to the resumed session of the Conference for adoption. He further stated that, as indicated in the notification convening the meeting, he proposed to deal with two other matters relating to the resumed session, namely, a decision regarding the presidency of the Conference and the dates for the resumed session.

REVISED RULES OF PROCEDURE FOR THE REVIEW CONFERENCE

3. The Chairman recalled that, in accordance with the provisions of paragraph 4 of resolution I adopted by the Review Conference on 18 November 1988, in addition to consultations with regional group co-ordinators, two rounds of informal consultations with all States entitled to attend the Review Conference had been carried out on 2 and 3 July 1990 and 31 October and 1 November 1990, respectively. On the basis of these consultations, a final compromise package had been presented to all regional groups and China on 1 November 1990. As indicated in the notification convening the meeting, consequent to further consultations, all regional groups and China, with the exception of one country in Group B, had now accepted the compromise package on the rules of procedure as the basis for the resumption of the Review Conference.

4. The compromise package on the rules of procedure consisted of a revised set of rules of procedure supplemented by a declaration incorporating a 'Gentleman's Agreement' concerning the mandate of the Review Conference, together with a supporting statement to be placed on record by the Senior

Legal Adviser of UNCTAD. The declaration and the supporting statement were reproduced in document UNCTAD/PSM/CAS/283. The objective of this Gentleman's Agreement was to ensure a common understanding of the scope of the work of the Review Conference and of the manner in which it would be carried out, having regard to the provisions of article 52, paragraph 1, of the Convention.

5. The revised set of rules of procedure consisted of the provisional rules of procedure for the Review Conference, as initially prepared by the UNCTAD secretariat and set out in document TD/CODE.2/2, as amended by document TD/CODE.2/2/Amend.1, i.e.:

- the texts in respect of rules 4, 6, 18, 34, 35, 36, 37, 51 and 64 bis were replaced by the corresponding texts in TD/CODE.2/2/Amend.1;

- rule 68 stood deleted;

- in rules 48 and 49, the term "Drafting Committee" was replaced by the term "Legal Drafting Committee".

6. The Chairman also drew the attention of the meeting to rule 60 of the rules of procedure regarding the participation of representatives designated by the United Nations Council for Namibia. In the light of Namibia's accession to independence, he suggested that rule 60 of the rules of procedure be deleted.

7. The meeting approved the compromise package on the rules of procedure, i.e. TD/CODE.2/2 as amended by TD/CODE.2/2/Amend.1, and the deletion of rule 60, with the text of document UNCTAD/PSM/CAS/283 to be reproduced as an appendix to the rules of procedure, and recommended its adoption to the resumed session of the Review Conference.

8. The Chairman stated that the revised provisional rules of procedure, with the rules renumbered as appropriate, together with the appendix, would be published as a single integrated document for the resumed session.

9. After the approval of the revised rules of procedure by the meeting, the co-ordinator for Group B (Mr. H. de Jong, Netherlands) made a statement which is reproduced in the annex to this report. In reply, the Chairman sought confirmation from the co-ordinator of Group B that his statement was without prejudice to the unconditional acceptance by Group B, with the exception of one country of that Group, of the compromise package on the rules of procedure as the basis for the resumption of the Review Conference. The Co-ordinator of Group B confirmed this.

THE PRESIDENT OF THE CONFERENCE

10. The Chairman recalled that Mr. L.M.S. Rajwar of India had been unanimously elected President of the Review Conference on 31 October 1988. As President of the Conference, Mr. Rajwar had been intimately involved in the informal consultations on the rules of procedure throughout 1989 and had been in close touch with developments since then. Towards the end of 1989, Mr. Rajwar had retired from the Indian public service and therefore it would not be possible for him to remain as a member of the Indian delegation to the resumed session of the Review Conference. Governments had two options in this situation. One was to elect a new President of the Conference at its resumed session. As a second option, if Governments wished to ensure continuity in the post of President, the Review Conference could confirm Mr. Rajwar as independent President of the Conference. Precedents for the continuation of the incumbent President as an independent President in similar circumstances existed in previous Uited Nations Conferences such as the United Nations Conference on a Code of Conduct for Liner Conferences and in the United Nations Conference on the Law of the Sea. There had been also cases of United Nations Conferences where eminent persons with specialized expertise in the subject concerned had been selected to be independent President of the Conference.

11. The Chairman suggested that the meeting might wish to make a recommendation regarding this matter, as it would help to expedite and facilitate the organization of the work of the resumed session. The meeting agreed to recommend to the resumed session that Mr. L.M.S. Rajwar of India be confirmed as independent President of the Review Conference.

DATES FOR THE RESUMED SESSION

12. The Chairman stated that the secretariat had provisionally foreseen a period of three weeks from 21 May to 7 June 1991 for the resumed session. The opening date of 21 May fell slightly short of the three-month period of notice required after agreement had been reached on the rules of procedure, as stipulated in paragraph 3 of Resolution I on the resumed session adopted on 18 November 1988. However, if the dates of 21 May to 7 June 1991 were to be missed, there might not be another opportunity to convene the resumed session until late in 1991. In the circumstances, the Secretary-General suggested that delegations might wish to confirm these dates for the resumed session.

13. The meeting endorsed these dates for the resumed session.

ANY OTHER BUSINESS

14. The Chairman stated that, in addition to the document incorporating the revised rules of procedure (TD/CODE.2/2/Rev.1), the secretariat would also publish a further document, entitled "Organization of the work of the resumed session of the Review Conference" (TD/CODE.2/8), providing suggestions for the organization of the work of the resumed session and supplementary annotations to the agenda of the Conference, which had already been adopted. A report on the present meeting would also be published. He assured delegates that every effort would be made to issue the documents as early as possible.

ATTENDANCE

15. The following States members of UNCTAD participated in the meeting: Algeria; Argentina; Australia; Belgium; Bulgaria; Cameroon; Chile; China; Côte d'Ivoire; Czechoslovakia; Denmark; Egypt; France; Gabon; Germany; Ghana; Greece; India; Indonesia; Japan; Kenya; Madagascar; Malaysia; Mexico; Morocco; Netherlands; Norway; Philippines; Poland; Republic of Korea; Sri Lanka; Thailand; Turkey; Union of Soviet Socialist Republics; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland.

16. The following intergovernmental organizations were represented at the meeting: Organisation for Economic Co-operation and Development; Organization of African Unity.

Annex

Statement delivered by Group B on 5 March 1991 after approval of the Rules of Procedure

Mr. Chairman,

1. After protracted negotiations agreement has now been reached on the convening of a Resumed Session of the United Nations Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences. While the Group of 77, Group D and China agreed, despite any concerns they may have had, to the compromise proposal as submitted by Secretary-General Dadzie to all Groups during the two day consultations on the rules of procedure in October/November 1990 it is no secret that Group B had, and still has, serious reservations about subscribing to that compromise. Nevertheless, Group B has decided not to block the Review Conference which will operate in accordance with the the rules of procedure as contained in the compromise submitted by Secretary-General Dadzie.

2. Group B welcomes the fact that all interested countries, whether contracting or non-contracting states will be able to participate in the conference. The Code has implications for the whole world's shipping industry and those using these ocean services. Furthermore, as the Convention is an important instrument, it is particularly important to involve all interested parties.

3. Delegates will recall that during the consultations in June and October 1990 on the rules of procedure for a resumed session, Group B identified four basic issues that we considered should be part of any agreement on rules of procedure and which, in our view, are not adequately reflected in the Secretary-General's compromise proposal. I would therefore like to place verbatim on the record of the Conference, Group B's guiding principles which we will adhere to at the resumed session. They are:

- the present scope and fundamental objectives and basic principles of the Code of Conduct for Liner Conferences shall remain unchanged.

4. The Code establishes a legal framework within which liner shipping conferences should operate in trades between contracting parties. The Convention grants certain rights to liner conferences but at the same time it imposes certain obligations upon them. Proposals which attempt to widen the present scope of the Convention to cover, for example, bulk shipments, or restrict outsider activities for the purpose of preserving a share of the total trade for national and/or conference lines, or which regulate non-conference shipping lines operating on a commercial basis, will be rejected by Group B.

5. We have made our position clear as regards non-conference liner shipping in November 1988 but allow me to explain and to emphasise once again. Under existing legislation in Group B countries, liner conferences are expected to be subject to counter-balancing forces which include non-conference shipping

lines, strong shippers, and shippers' councils. Any attempt to restrict competition provided for by non-conference lines would lead Group B countries to review possibilities to maintain such competition in order to preserve an economic and efficient liner shipping system. In addition, any such restriction or regulation is unacceptable to a certain number of Group B countries due to other existing international legal obligations these countries have entered to on the basis and in the light of the regulatory framework which the Convention provides for. Such obligations have been established within the framework provided by the limited scope of application of the Convention.

6. Any extension of the scope to covering non-liner shipping is totally unacceptable. Our opposition to regulate shipments other than liner conference shipments is well known. As the conclusions and recommendations of the groups of experts in these fields have shown, the principles governing the carriage of cargo in the tramp trades, reefer, dry bulk carrier, oil tanker, gas carrier and chemical carrier trades alike are not the same as those governing liner conference shipping and we can not accept any intervention into the existing market mechanisms in these trades.

7. The Code, in contrast to other multilateral maritime instruments, affords economic rights not only to the national lines of the contracting parties at each end of the trade, but affects also the participation of the shipping lines of other countries. It follows then that all countries, both contracting and non-contracting parties to the Code, have an economic stake in the Code and the manner of its implementation. Group B is convinced that these rights should not be reduced, nor obligations made more onerous, during the Review Conference. Such interference would harm the further liberalisation of world shipping, and in turn create barriers to the expansion of global trade and shipping.

8. Any change to the Code to alter its basic purpose and scope would create a different multilateral instrument which should require consideration at a conference at which there was equal participation of all states. The voting rules for this Review Conference do not allow that equal participation.

- the work of the Conference should concentrate on the working and implementation of the Convention

9. We are looking forward to considering, together with the other Groups, amendments of a technical and operational nature but rejecting, as stated above, the consideration of all other amendments going beyond working and implementation.

Closely related to the above two essential points is our third, ie.

- the fundamental nature of the Code shall not be changed by amendments or otherwise, including the rights and obligations of third country shipping lines as set out in Chapter II of the Code.

10. By virtue of being a member of a conference in a trade covered by the Convention, a shipping line assumes rights and obligations under the Convention, regardless of whether or not that conference line is from a

contracting state to the Convention. We firmly believe that, in light of the long drawn out legislative history of the Convention, the status quo of such lines under the Convention needs to be preserved.

Finally, Mr. Chairman, we believe that

- the outcome of the Conference's deliberations on various issues should be reflected in documents such as guidelines or memoranda.

11. The rationale for this fourth and last point is rather simple: any conclusions should be properly documented for ready reference and uniform implementation and interpretation by contracting parties.

Mr. Chairman,

12. These four essential principles are our bottom line and are not subject to negotiation or further compromise. We believe that there should be no misunderstanding about Group B's attitude during the Conference. It is the intention of Group B to contribute to a thorough and productive Review Conference, and the reaching of conclusions through consensus for the mutually beneficial expansion of shipping and trade of all countries.

13. I apologise for having spoken at length explaining Group B's firm position under which it will participate in the work of the resumed session of the Conference. However, we believe that there should be no misunderstanding about Group B's attitude during the Conference: we will not be able to co-operate if these four essential principles are not adhered to. Within these parameters Group B will join other Groups and China in a full and open discussion of the working and implementation of the Convention.